



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/166637

PRELIMINARY RECITALS

Pursuant to a petition filed June 13, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on July 02, 2015, at Milwaukee, Wisconsin. The record was held open post-hearing to allow the Petitioner to provide additional evidence. On July 30, 2015, additional evidence was submitted and the record was closed.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$7,329 for the period of September 1, 2012 – May 31, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pang Thao Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On June 15, 2011, Petitioner married [REDACTED]. They have a child in common that was born on [REDACTED].

3. On June 5, 2012, the Petitioner and [REDACTED] registered to vote. They each provided the same address and apartment # on Lovers Lane Rd., Milwaukee as their current address.
4. On August 3, 2012, the Petitioner filed a Six Month Report Form (SMRF). She reported herself and three children in the household. She reported her address on Lovers Lane Rd., Milwaukee. She reported receiving CS income for her oldest child. She reported her employment at [REDACTED].
5. On October 12, 2012, the Petitioner filed an online change report for a new address on [REDACTED], Milwaukee.
6. [REDACTED] received a traffic forfeiture on January 17, 2013. The address provided to the court on January 17, 2013 was the same address as the Petitioner's on [REDACTED].
7. On February 19, 2013, the Petitioner completed a renewal. She reported her address on [REDACTED]. She reported herself and three children in the household. She reported receiving CS for her oldest child.
8. On May 29, 2013, the Petitioner submitted an application for child care. She reported her address on [REDACTED]. She reported herself and three children in the household. She reported [REDACTED] as the father of one of her children. She reported he had been absent since July 12, 2010 due to "separation."
9. On June 28, 2013, the Petitioner and [REDACTED] signed a lease for a residence on W. Acacia residence to commence on July 15, 2013.
10. On July 20, 2013, the Petitioner filed an online change report for a new address on W. Acacia St., Milwaukee.
11. On July 23, 2013, [REDACTED] filed a judgment for eviction against [REDACTED] for the Petitioner's apartment on [REDACTED].
12. The property manager for [REDACTED] provided a statement to the agency on April 27, 2015 that Petitioner and [REDACTED] applied for and were accept for a unit and lived there together as a family until the fall of 2014.
13. On September 1, 2013, the Petitioner submitted a SMRF. She reported her address on Acacia. She reported herself and three children in the household. She reported CS for her oldest child.
14. On February 2, 2014, the Petitioner filed an online change report to notify the agency of her pregnancy.
15. On August 17, 2014, the Petitioner completed a renewal. She reported her address on Acacia. She reported herself and three children in the household. She reported CS for her oldest child.
16. On August 24, 2014, the Petitioner's child was born. [REDACTED] is the father.
17. On March 3, 2015, the Petitioner submitted a SMRF. She reported herself and four children in the household.
18. On May 19, 2015, the agency issued FS Overpayment Notices to the Petitioner and [REDACTED] notifying them of the agency's intent to recover FS overissuances in the total amount of \$7,329 for the period of September 1, 2012 – May 31, 2015 due to their failure to report accurate household members.
19. Transunion Consumer Credit Report lists [REDACTED]'s address as of July, 2013 as the Petitioner's W. Acacia address. A credit report for the Petitioner lists her address on W. Acacia as of September, 2013.
20. [REDACTED] provided the Petitioner's address on W Acacia, Milwaukee to his employers: [REDACTED], [REDACTED] and [REDACTED].

21. In July, 2012 and January and May, 2013, financial statements were issued to the Petitioner showing deposits for child support and an address on N. Lovers Lane Rd.. Financial statements dated January, 2014 and February, 2014 were issued to the Petitioner showing child support payments and an address on W. Acacia for the Petitioner. Statements dated May, June and July, 2014 show no child support payments were received by the Petitioner.
22. On June 13, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

In this case, the agency asserts that [REDACTED] lived with the Petitioner from September, 2012 – May, 2015 and the Petitioner did not report [REDACTED] as part of the household. As a result, [REDACTED]'s income was not included in determining the household's eligibility for FS benefits. The agency calculated the overpayment by including [REDACTED]'s income as household income. It determined that the household income exceeded the gross income limit for the program and it therefore seeks to recover FS benefits issued to the household from September 1, 2012 – May 31, 2015.

In support of its argument, the agency presented various evidence in support of its argument that [REDACTED] lived with the Petitioner, including court records, a lease, a landlord statement, voter registration, a credit report, employer records, child support records and the fact that the Petitioner and [REDACTED] had two children together during this period. The agency also presented evidence of [REDACTED]'s and the Petitioner's wages to demonstrate how it calculated household income and the overpayment.

At the hearing, the Petitioner and [REDACTED] testified that they were married in 2011 but never lived together until recently. They testified that [REDACTED] saw the children regularly and that he used the Petitioner's address as his own but he did not live there. With regard to the lease, they testified that [REDACTED]'s name was on the lease because without it, the Petitioner would not have been able to obtain the apartment. They asserted that the landlord who provided the statement that they lived together never saw [REDACTED] and would have no basis for knowing whether [REDACTED] was living there. The Petitioner and [REDACTED] testified that they also had a dispute with this landlord and that he may provide a statement against them as a form of retaliation. The Petitioner testified that [REDACTED] came at least twice/week to the home and babysat occasionally. She testified that he did not contribute financially to the household but did bring small things for the children. The Petitioner and [REDACTED] testified that [REDACTED] lived mostly with his mother on 51st St. during the overpayment period.

The record was held open post-hearing for the Petitioner to provide evidence to demonstrate that [REDACTED] did not live with her during the overpayment period. On July 30, 2015, the Petitioner provided a copy of page 1 of what is alleged to be [REDACTED]'s 2012 tax return showing an address on 51st St., Milwaukee. The remainder of the tax return including the signature page was not submitted. The Petitioner also submitted

copies of auto repair receipts issued to [REDACTED] by an unknown auto repair shop on Flagg Ave in Milwaukee. The receipts are dated December 13, 2012, April 15, 2013, September 27, 2013 and February 3, 2014. The receipts show [REDACTED]'s address as the 51st St. address. The Petitioner also submitted a document entitled "30 day notice" which indicates that the Petitioner and [REDACTED] notified the landlord of the [REDACTED] apartment of their intention to move from the apartment. The statement is signed by the Petitioner and the office manager but it is not dated.

Based on the evidence presented, I conclude that the agency has met its burden to demonstrate by a preponderance of the evidence, that [REDACTED] resided with the Petitioner and the Petitioner failed to properly report her household composition and income during the period of September 1, 2012 – May 31, 2015. The evidence presented by the agency far outweighs that provided by the Petitioner and [REDACTED]. The tax return is only for the year 2012 and only page one of the return was submitted. I cannot conclude from the submission that this was the actual return filed with the IRS. Also, no returns for the years 2013 – 14 were submitted. The auto repair receipts are lacking in credibility due to having no auto repair shop named and no signatures of any kind. The 30 day notice provides nothing more than evidence of [REDACTED] and the Petitioner's intent to move from the apartment and that there is no further dispute regarding payments.

I reviewed the agency's calculation of the overpayment and find that it was properly calculated based on the Petitioner's and [REDACTED]'s wages. The agency properly seeks to recover an overissuance of FS benefits in the total amount of \$7,329 for the period of September 1, 2012 – May 31, 2015.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of FS benefits in the total amount of \$7,329 for the period of September 1, 2012 – May 31, 2015.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

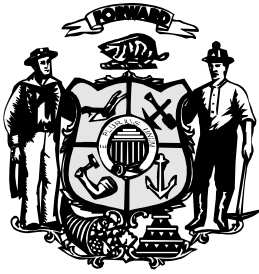
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of August, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 12, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability